

Harassment: Distinguishing 'Intent' from 'Impact'

By Sharon Bar-David

Dealing with harassment complaints is never a simple matter. Things get particularly tricky in those non-blattant, 'grey' situations, where someone complains of being impacted negatively by the actions of another, yet that other person ("The Source") seems to have intended no harm. When the Source did not harbour bad intentions, organizations often dismiss the complaint as insignificant, concluding that the event does not qualify as 'harassment' because there was no mal-intent.

This approach can have dire consequences. First, it exposes the organization to potential legal challenges; the victim seeking remedy for the situation may, if not satisfied with the organizational response, take it further. Second, behaviours that are experienced by someone as intimidating or offensive will continue occurring, to the detriment of the work environment and people's productivity.

This problem is the result of some confusion that exists between 'intent' and 'impact'. 'Intent' describes the Source's motive and intentions when initiating action/s that offend or hurt others. 'Impact' refers to the ways in which a person (or persons) is negatively impacted by the Source's conduct.

Many organizations confuse the issues of 'intent' and 'impact'

To illustrate, here are two examples, both adapted from real-life scenarios: the first involves a case where a new employee of First Nations descent, while sitting in the lunchroom on his first day at work, is approached by a friendly colleague. In the presence of a couple of other colleagues, the veteran employee, attempting to befriend the newcomer and make him feel comfortable in his new job, persistently inquires about the Source of that newcomer's unique name. the newcomer repeatedly responds that the name is 'a Canadian name'. Later, the newcomer approaches Human Resources asserting that he was made to feel intimidated and publicly shamed by this exchange. He claims this is harassment.

Another example involves a married, male employee who engages in highly sexual discourse with a female employee. His intention is to introduce some harmless flirtation and 'spice' into his working day. He has no intention of getting physically involved with the colleague and he honestly believes that these exchanges are mutually enjoyable. After a while, the female employee confides to another colleague that she is feeling coerced to engage in the interactions. She relays that she is afraid to tell him to stop since the man is up for promotion and taking a stand could have

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a negative impact on her future job security. This situation is subsequently brought to the attention of the current manager who needs to decide how to handle it.

These situations highlight the wide gap that often exists between 'intention' and 'impact'. In both instances, the Source did not harbour a conscious intent to humiliate, degrade or intimidate. Yet in both situations, another employee was impacted negatively.

The question that arises is this: how much relative weight should the manager (or HR professional) place on the *impact* that the occurrence had on the affected person/s and how much weight should be given to the Source's *intent*?

The answer to this question changes as one moves through the main two phases of the inquiry process, as follows¹:

Phase 1: determining whether

'harassment' took place. In this phase, the investigator/s needs to determine whether 'harassment', as defined by the organization's policies, indeed took place. At times the bar may be quite low and thus even seemingly minor actions may qualify as harassment.

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Phase 2: determining the proper consequences for the harassment. If it is determined that the bar for 'harassment' was met, the organization needs to decide how to address the situation. The possible courses of actions vary greatly depending on the severity of the situation; consequences can be as light as an awareness-raising conversation with the Source or as serious as dismissal.

In Phase 1, IMPACT is the single most important factor. The focus has to be on whether or not people's sense of dignity was negatively impacted or whether someone was humiliated or insulted by the Source's actions. If someone was impacted negatively, then the offensive action will most likely be classified as 'harassment'.

In the examples outlined above, in the instance of the newcomer who was relentlessly asked about the origin of

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her name, most organizations' harassment policy would probably render this behaviour as 'harassment'. Policies often refer to 'unwelcome' actions which create an intimidating or hostile work environment, interfere with an employee's work performance, or threaten economic livelihood. Clearly this situation meets these criteria.

In the second example, that of the sexually-saturated communication between two employees, the 'harassment' bar was also met: the female employee perceived that her future job security may be threatened and the therefore felt compelled to participate in exchanges that she experienced as demeaning and unwelcome.

Up until this point of the investigation, there was no room to examine the question of intent. the organization is legally (and morally) responsible for providing employees with a harassment-workplace. Once there is a complaint of harassment and if the complaint meets the criteria of reasonability, then the organization is legally bound to ensure that the harassment behaviours cease immediately.

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¹ Note that there is also a third phase, which involves all the activities necessary to re-establish a respectful work environment following an occurrence, however this phase is not relevant to the discussion at hand and thus will not be elaborated upon.

be a pivotal factor in determining which type of corrective action should be taken.

It is not uncommon for the Source to engage in harassing behaviours out of sheer ignorance or simply because they misread social cues. Often, therefore, some education, awareness raising or straightforward coaching is all that is needed in order to extinguish the problem behaviour. Other times, however, the Source's intention was destructive and a stricter response is now in order.

Let's return to the examples cited above: the person enquiring about the origin of the newcomer's name was coming, paradoxically, from the best of intentions: she was endeavouring to be friendly and was attempting to make the victim feel at home in his new work environment. While she was inept in reading the newcomers 'this is unwelcome' cues, still the Source's intent was benevolent. The end result (= impact) was that someone was offended; however the *intent* was not to hurt or harass.

In this case, the most effective organizational response in terms of the Source would be to sensitize the employee to the importance of reading cues when working in a multi-cultural environment. It would also be important to do this gently, since the Source could easily be devastated when she realizes that her well-meaning actions were received in such a negative fashion.

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In the second example, the employee initiating the ongoing sexual exchanges was intending to create a harmless, enjoyable interaction. In his mind this was consensual, and the victim's active participation would not have reasonably led him to believe otherwise. However, many organizations would consider this behaviour, at the very least, as unprofessional. This lack of professionalism alone warrants, at the very minimum, a thorough discussion with the Source. As to the intimidating impact on another individual, the Source's intent, together with the overall organizational culture and its unique sensibilities, would play an important role in determining how seriously this should be addressed.

In both the these examples, someone was impacted and the enquiry held in Phase 1 of the investigation determined that this impact reasonably met the criteria for 'harassment'. Therefore, an organizational response is imperative. The exact nature of this response may vary greatly across organizations.

In summary, organizations often miss the distinction between 'intent' and 'impact' and therefore tend to avoid taking decisive action when this type of action is needed. A clearer understanding of the these terms and the correct application in two key phases of any harassment investigation will yield much better results and will protect the organization and its employees from unnecessary risks.

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